

Progressive Grant Program Discipline and Appeal Processes

The following information provides guidelines grantees should understand related to high-risk and other disciplinary statuses. It is important for grantees to understand the progressive discipline and appeals processes allowable within the DFC Program.

1. General

A. Congress authorizes and appropriates the Executive Office of the President, Office of National Drug Control Policy (ONDCP) to make and award Drug Free Communities Support Program grants to strengthen communities and reduce youth drug use. Through an Interagency Agreement, ONDCP partners with the Department of Health and Human Services/Substance Abuse and Mental Health Services to administer the DFC program. ONDCP and SAMHSA have developed processes to proactively identify DFC grant recipient fiscal and program deficiencies early and to provide the technical assistance and training necessary to help grantees correct the issues before further action is necessary. ONDCP and SAMHSA meet monthly, and additionally, as needed to review the status of grant recipients currently on high-risk status, or who are deemed to be at risk of being placed on high-risk status, suspended, or terminated.

B. This proactive system of early identification of programmatic and fiscal issues relies on an effective corps of programmatic Project Officers and fiscal Grants Management Specialists working together through site visits, semi-annual reports, telephone and email conversations and other input to identify and respond to challenges experienced by grantees. These challenges will be tracked through the monthly ONDCP and SAMHSA management meetings.

C. DFC grant recipient's ongoing failure to comply with the Terms and Conditions of the award may cause SAMHSA and ONDCP to take one or more actions depending on the severity and duration of the non-compliance.

D. There are three progressive discipline actions that can be taken that are in accordance with DFC Statutes, HHS regulations and the HHS Awarding Agency Grants Administration Manual-Part III:

- a) High-risk status;
- b) Suspension; and/or
- c) Termination.

2. High-Risk Process

A. The first step in the progressive discipline process is placing the DFC grant recipient on high-risk status. There is no formal HHS appeals process for grant recipients placed on high-risk status.

B. When a DFC grant recipient is placed on high-risk status, the SAMHSA Financial Advisory Services Officer provides written notification to the grantee with the following

required information (45 CFR 74.14 for non-profits or 45 CFR 92.12 for State, Local, Tribal governments).

C. Nature of additional requirements and the method for requesting reimbursement of allowable expenditures (e.g., funding restriction and required submission of SF-270 Request for Advance or Reimbursements).

- Explanation of why additional requirements are being imposed;
- Corrective actions the grant recipient needs to take;
- Timelines for completion of the corrective actions; and
- Method for requesting reconsideration of additional requirements.

D. DFC grant recipients are required to provide a written response to the letter within 30 calendar days of receipt. The grant recipient will also receive a revised Notice of Award identifying the high-risk special condition. This notice will include brief written overview of the process, as well as a hyperlink to the website which provides detailed information related to suspension, termination and the appeals process.

E. DFC grantees are informed that failure to respond to the corrective action detailed in the high-risk notification letter may result in suspension or termination of the grant. The notification letter will include the SAMHSA DFC appeals process for suspension and termination. The SAMHSA DFC Grant Specialist and Project Officers provide guidance to the grant recipient in making corrections.

F. When the grantee satisfactorily makes the corrective action required, as confirmed by SAMHSA Division of Grants Management, the Financial Advisory Services Officer promptly informs the grantee of its recommendation to remove the high risk status. A new Notice of Award will be issued by the SAMHSA Division of Grants Management informing the grant recipient that the special condition has been removed.

G. Staff from ONDCP, SAMHSA Division of Grants Management, and SAMHSA Center for Substance Abuse Prevention will work as a team to support the grant recipient to resolve high-risk status concerns and prevent future discipline actions including suspension or termination.

3. Suspension Process

A. Suspension is the second step in the progressive discipline process. Suspension is “an action by the HHS awarding agency that temporarily withdraws the agency's financial assistance under an award, pending corrective action by the recipient or pending a decision to terminate the award” (45 CFR 74.2). Through a Memorandum of Understanding with ONDCP, SAMHSA and the HHS Departmental Appeals Board, DFC grant recipients will have an option to appeal a grant suspension.

B. The SAMHSA Division of Grant Management provides written notification to the grant recipient including:

- Deficiencies that are severe and require a recommendation to suspend the grant award;
- Conditions that warrant suspension and reasons why suspension may be imposed;
- Type of corrective action(s) needed;
- Time allowed for completing the corrective action(s);
- Method for requesting reconsideration of the conditions; and
- Information related to the appeals process for suspension or termination

C. If SAMHSA and ONDCP determine that suspension is warranted, the SAMHSA Administrator will provide written notification to the grant recipient that a decision has been made to suspend the DFC grant. SAMHSA's decision, detailed in the Administrator's letter, is HHS's final decision unless the grant recipient submits a written notice of appeal within 30 calendar days of receipt of the SAMHSA Administrator's suspension letter. Under current procedures, SAMHSA Discretionary Grant recipients do not have a formal process to appeal suspensions to the HHS Departmental Appeals Board. Responding to Congressional intent for DFC, SAMHSA is altering current practice and signed a Memorandum of Understanding (MOU) with the HHS Departmental Appeals Board to adjudicate grantee's appeals of final written decisions related to DFC grant suspensions. The MOU was signed by ONDCP, SAMHSA and the HHS Departmental Appeals Board in April of 2008.

D. The notification in the SAMHSA Administrator's suspension letter provides instructions on how the DFC recipient may appeal the decision. The grant recipient's written notice of appeal must include:

- SAMHSA Administrator's decision letter;
- Statement that the recipient intends to appeal SAMHSA's decision;
- Amount of grant funds in dispute; and
- Brief description of why the recipient believes the final decision should be reversed.

E. The written notice of appeal should be sent via registered or certified mail to: DHHS/Office of the Secretary Departmental Appeals Board-MS 6127; DAB chair and Appellate Division; 300 Independence Avenue, SW; Cohen Building, Room G-644; Washington, DC 20201.

F. The HHS Departmental Appeals Board (DAB) will make an independent determination in accordance with 45 C.F.R. part 16 and send the DFC grant recipient a written notification of their decision with a copy to SAMHSA. SAMHSA will provide a copy of the written decision to ONDCP.

4. Termination Process

A. The third step in the progressive discipline process is grant termination. Termination is "the cancellation of HHS awarding agency sponsorship, in whole or in part, under an agreement at any time prior to the date of completion" (45 CFR 74.2). The process is the same as steps for grant suspension.

B. The SAMHSA Division of Grants Management provides written notification to the grantee including:

- Deficiencies that are severe and require a recommendation to terminate the grant award;
- Conditions that warrant termination and reasons why termination may be imposed;
- Type of corrective action(s) needed;
- Time allowed for completing the corrective action(s);
- Method for requesting reconsideration of the conditions; and
- Information related to appeals process for grant termination.

C. The grant recipient has 30 calendar days from receipt to respond to the written SAMHSA notification. If the grant recipient does not respond satisfactorily within 30 calendar days, SAMHSA will issue a final decision to terminate the DFC grant. SAMHSA will confer with ONDCP before making a final decision to terminate a DFC grant.

D. If SAMHSA and ONDCP determine that termination is warranted, the SAMHSA Administrator will provide written notification to the grant recipient that a final decision has been made to terminate the DFC grant. SAMHSA's final decision, detailed in the Administrator's letter, is HHS's final decision unless the grant recipient submits a written notice of appeal within 30 calendar days of receipt of the SAMHSA Administrator's letter.

E. The notification, in the SAMHSA Administrator's termination letter, provides instructions on how the DFC recipient may appeal the decision. The grant recipient's written notice of appeal must include:

- SAMHSA Administrator's decision letter;
- a statement that the recipient intends to appeal SAMHSA's final decision;
- amount of grant funds in dispute; and
- brief description of why the recipient believes the decision should be reversed.

F. The written notice of appeal should be sent via registered or certified mail to: DHHS/Office of the Secretary Departmental Appeals Board-MS 6127; DAB Chair and Appellate Division; 300 Independence Avenue, SW; Cohen Building, Room G-644; Washington, DC 20201.

G. The HHS DAB will make an independent determination in accordance with 45 C.F.R. part 16 and send the DFC grant recipient written notification of their decision with a copy to SAMHSA. SAMHSA will provide a copy of the written decision to ONDCP.

5. Processes for New and Continuation Applications

New Applications:

A. New applicants applying for a DFC grant award do not have a formal appeal process because they do not have a current award. New applicants are defined as: 1) a coalition that has never received a DFC grant; 2) a coalition that previously received a DFC grant, but experienced a lapse in funding; 3) a coalition that has concluded the first five-year funding and is applying for a second five-year funding cycle.

B. New applications that are screened and determined to be ineligible for administrative or statutory reasons are not peer reviewed. If screened out for administrative reasons, the applicant will receive a letter informing them of their ineligibility within 30 calendar days of the screening process. Administrative eligibility requirements are clearly defined in the DFC Request for Application and emphasized in DFC Request for Application Workshops.

C. If an application is deemed ineligible for statutory reasons during the initial review, the applicant will receive written notification of the specific reason identified for the statutory ineligibility and will then have an opportunity to respond and potentially revise the finding through identification of information provided in their initial response to the Request for Application. If an applicant is able to satisfactorily respond to the statutory eligibility concern within the time allowed, the application may then proceed to peer review. Those applicants unable to satisfy the eligibility concerns are not forwarded to peer review and have no further appeals rights.

D. New applications that meet administrative and statutory eligibility requirements are peer reviewed. All peer reviewed applications receive a written summary statement of strengths and weaknesses of the application and scores within 30 calendar days of the ONDCP grant award announcements.

Continuation Applications:

A. In accordance with criteria set forth in the Drug Free Communities Act, 1997 (Public Law 105-20) and subsequent reauthorizations, coalitions funded through the DFC Program must demonstrate that the coalition continues to meet the statutory eligibility requirements annually as part of the grant renewal or continuation process. Coalitions who do not continue to meet the statutory eligibility requirements may be placed on a high-risk restriction, may be required to submit supporting documentation regarding the eligibility requirements, and/or are required to submit a corrective action plan within 90 days.

B. Failure to meet eligibility requirements may result in loss of continued DFC grant funding. There is no HHS appeals process if Continuation grant recipients fail to meet eligibility requirements.

6. Dissemination of the DFC Grant Recipient Processes for Appeal

A. ONDCP and SAMHSA strive to be proactive in identifying DFC grant recipient fiscal and program deficiencies early and to provide technical assistance and opportunities for training to correct the issues before progressive discipline is warranted. ONDCP and SAMHSA will continue to be vigilant in widespread dissemination of the DFC grant recipient roles and responsibilities and the appeal processes for suspension and termination. ONDCP and SAMHSA will continue to review at least monthly the status of DFC grant recipients:

- At risk of being placed on high-risk or currently on high risk status;

- Grant recipients at risk for suspension and termination; and
 - DFC Project Officer and Grant Specialist action plans to support the recipient.
- B. The DFC Notice of Award Terms and Conditions will include a one-page written overview of the SAMHSA Appeals Process and provide a link to the full document on the official DFC website in this section. DFC Project Officers will review the information during their post-award conference call with grant recipients.
- C. SAMHSA will post this information on SAMHSA.gov, an overview of the DFC appeals process along with a hyperlink to the full text the appeals processes for suspension and termination located on the program's website at www.whitehousedrugpolicy.gov/dfc.
- D. Provide a copy of the progressive discipline and associated appeals process to each Grantee upon placement on high-risk, Suspension, or Termination.
- E. Include a description of both progressive discipline and associated appeals processes as an attachment within the annual DFC Request for Applications (RFA).
- F. Review the progressive discipline and associated appeals process in the administrative portion of the DFC annual New Grantee Training.